

No. 11,865

IN THE

**United States Court of Appeals
For the Ninth Circuit**

TRANS-PACIFIC AIRLINES, LTD.

(a corporation),

Appellant,

vs.

HAWAIIAN AIRLINES, LIMITED

(a corporation),

Appellee.

**On Appeal from the District Court of the United States
for the Territory of Hawaii.**

APPELLEE'S PETITION FOR A REHEARING.

J. GARNER ANTHONY,

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and Petitioner.*

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FILED

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PAUL P. O'BRIEN

Table of Authorities Cited

Cases	Pages
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Civil Aeronautics Act of 1938, as amended, 49 U.S.C., Sec- tion 401 et seq. 52 Stat. 973 et seq.:	
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APPELLEE'S PETITION FOR A REHEARING.

*To the Honorable William Denman, Chief Judge, and
to the Honorable Associate Judges of the United
States Court of Appeals for the Ninth Circuit:*

We respectfully petition the Court for a rehearing
upon the following grounds:

1.

That this Court has erroneously:

(a) Held that the letter of registration (R. 80)
conferred an exemption on appellant and overlooked

the fact that its issuance was a routine function involving no exercise of discretion;¹

(b) Failed to distinguish between regulations of general and regulations of particular applicability;

(c) Held that questions of appellant's economic status were involved in determining whether appellant was exempted;

(d) Held that the District Court should have refused to follow the plain mandate of Section 1007(a) of the Act which requires it to issue an injunction for violating Section 401(a) of the Act.

2.

After submission of this case the Civil Aeronautics Board² expressly held that a letter of registration did not confer an exemption from the provisions of Section 401(a) of the Act, directly contrary to the conclusion reached by this Court.

3.

On November 29, 1948, the Civil Aeronautics Board rendered its decision awarding a certificate of public convenience and necessity to appellant under Section 401(a) of the Act. The order authorizing the issuance of certificate was signed by the President and made public on February 17, 1949. It is effective sixty days from date. The decree below restrains ap-

¹CAB Regulations, Serial No. 394; 12 Fed. Reg. 4247 (1947).

²NATS Air Transportation Service, CAB Docket 3456, 2 CCH Av.L.R. para. 21,149, decided Feb. 10, 1949.

pellant's operations in violation of Section 401(a) of the Act. It follows that the above cause is moot.

In these circumstances the appropriate procedure for this Court is to vacate its judgment entered March 18, 1949, and remand the case to the District Court with instructions to dismiss the complaint upon the ground that the case is moot.

Brown v. Schwartz, 261 U.S. 216, 218 (1923) ;
Matheus v. United States, 282 U.S. 802 (1930) ;
Heitmuller v. Stokes, 256 U.S. 359 (1921) ;
 Robertson and Kirkham, *Jurisdiction of the
 Supreme Court of the United States*, Sections
 250, 291.

Dated, Honolulu, Hawaii,
 April 1, 1949.

Respectfully submitted,
 J. GARNER ANTHONY,
*Counsel for Appellee
 and Petitioner.*

ROBERTSON, CASTLE & ANTHONY,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for a Rehearing, in my judgment, is well founded and is not interposed for delay.

Dated, Honolulu, Hawaii,
April 1, 1949.

J. GARNER ANTHONY,
*Counsel for Appellee
and Petitioner.*

